



27

Office - Supreme Court, U. S.
~~FILED~~
OCT 2 1942
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the
United States

OCTOBER TERM 1942

No. 130

KHARAITI RAM SAMRAS,

Petitioner,

vs.

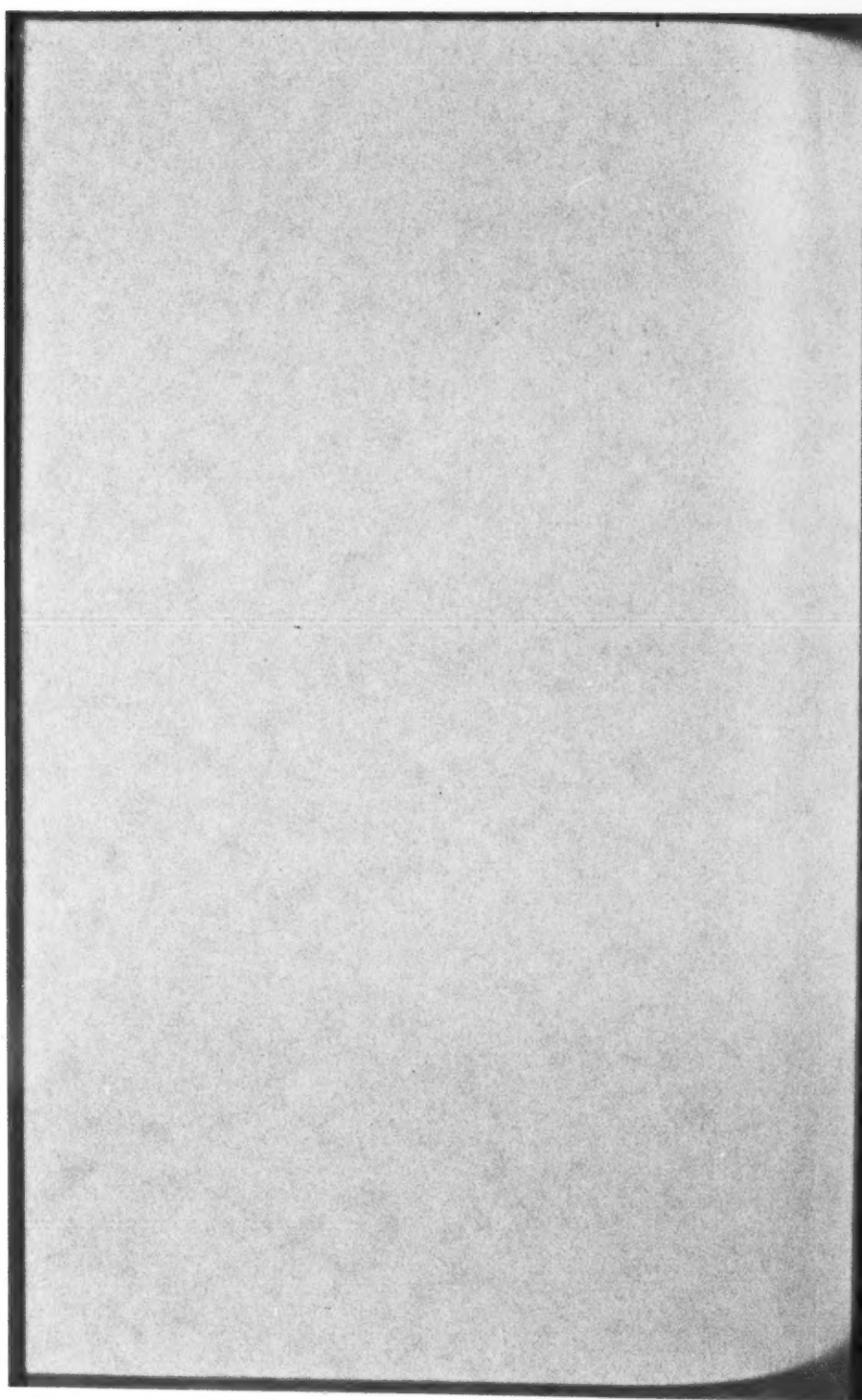
UNITED STATES OF AMERICA,

Respondent.

Brief In Opposition to Dismiss Petition
for Writ of Certiorari.

ERNEST B. D. SPAGNOLI,
Attorney for Petitioner.
308 Kansas Street,
San Francisco, California.

WALTER F. LYNCH,
Of Counsel for Petitioner.
703 Market Street,
San Francisco, California.



In the Supreme Court of the United States

OCTOBER TERM 1942

No. 130

KHARAITI RAM SAMRAS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Brief In Opposition to Dismiss Petition for Writ of Certiorari.

The Solicitor General contends in his memorandum on behalf of the respondent that the three calendar month's period allowed by section 8(a) of the Act of February 13, 1925, 43 Stat. 940, as amended (U. S.C., title 28, sec. 350), for filing and docketing a petition for writ of certiorari expired on May 13, 1942, inasmuch as the judgment of the Circuit Court of Appeals was entered on February 13, 1942. The Statute in question provides that the application for

writ of certiorari must be duly made within three months *after* the date of entry of judgment. The Statute reads as follows:

"That no * * * writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review, shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree * * * PROVIDED, That for good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a Justice of the Supreme Court."

The United States Supreme Court has definitely held that the day of entry of judgment must be *excluded* in the computation of time within which the petition for writ of certiorari may be filed. See *Smith v. Gale*, 137 U. S. 577, 34 L. ed. 792. Thus the three months period expired on May 14, 1942, and not on May 13, 1942, because the first day of the first calendar month *after* the date of entry of judgment was February 14, 1942, and the third calendar month thereafter expired on the 14th day of May, 1942. True it is that a month in law means a calendar month, or that period of time elapsing between a given date and the corresponding date of the next succeeding or preceding month by name. In computing time thereby days are not counted, but the calendar is examined and the day numerically corresponding to that day in the following month is ascertained, and the calendar month expires on that day. If the petition in the instant case had been filed and docketed on May 14, 1942, it would have been in due time. The Solicitor

General states in his memorandum that the Clerk advised that an application for an extension of time was made to a Justice of this Court on May 14, 1942, and was denied. The Statute provides that a Justice of the Supreme Court may extend the time for filing a petition for writ of certiorari for a period not exceeding sixty days. However the application for extension must be made before the original three months expires (*Cresswell ex rel. Di Pierro v. Tillinghast*, 286 U. S. 560). In the instant case an application for an extension of time was made to a Justice of this Court on May 14, 1942, and was by him denied solely on the ground of lack of power to grant it because it was not presented in time. The order denying said application is in the following words:

“Since application for extension of time was not presented within the statutory period it is denied for lack of power to grant it.”

The learned Justice of this Court obviously was under the impression that the time for applying for an extension of time within which to file and docket a petition for writ of certiorari expired on May 13, 1942, which was one day less than three calendar months *after* the entry of judgment in the Court of Appeals. Hence we respectfully contend that the application for an extension was presented in due time and that the Justice had power or jurisdiction to grant it. Inasmuch as the Justice denied the application solely on the mistaken ground that he had no power or jurisdiction to grant the same, the necessary and compelling inference is that had it been presented and

made on May 13, 1942, he would have granted the extension. If the application was defective otherwise, it should have been specified in the order denying the same. The specific inclusion of one objection operates to exclude all others. *Inclusio unius est exclusio alterius*. So, that being the situation, it is believed that justice demands that the order made denying the application for an extension be considered as being in fact an order allowing a reasonable extension of time within which to file and docket the petition for writ of certiorari. The record was filed on May 13, 1942. The petition for writ of certiorari was filed and docketed on June 8, 1942, twenty-five days later. The application for an extension within which to file the petition for a writ of certiorari was telegraphed, by straight wire, marked "rush", and prepaid, through the Postal Telegraph Company at San Francisco, California, at about 8 p. m. on May 13, 1942, to Mr. Charles Elmore Cropley, the Clerk of this Court, addressed to him at his residence, 2900 Connecticut Avenue, Washington, D. C., which telegram reached the Washington, D. C. office of the Postal Telegraph at 10:30 p. m. on May 13, 1942. The telegram was not delivered to Mr. Cropley until the following day. Council for petitioner received a telegram from Mr. Cropley on May 14, 1942, to the following effect:

"Your wire of May thirteenth requesting extension Samras case was received at 11:30 today and presented to Justice Douglas who has denied it with the following notation 'since application for extension of time was not presented within

the statutory period it is denied for lack of power to grant it.' ”

In view of all the circumstances, and the fact that the petition for writ of certiorari and brief in support thereof, which are now on file, and which are incorporated herein by reference without setting the same out in *haec verba*, discloses that a serious question of constitutional law is presented, never before decided by the Supreme Court, indirectly involving the asserted rights of more than 4,000 Hindus, natives of India, lawfully residing in the United States after having been admitted thereto for permanent residence, we believe that the petition for writ of certiorari should be considered on its merits. We believe that even though May 13, 1942, was the last day within which to apply for an extension, that this Honorable Court should consider that the application was made on that day, inasmuch as the application actually was in Washington, D. C. on said last mentioned day and was not presented before midnight of said day because of the fault of the Postal Telegraph Company.

San Francisco, California, September 28, 1942.

Respectfully submitted,

ERNEST B. D. SPAGNOLI,
Attorney for Petitioner.
398 Kansas Street,
San Francisco, California.

WALTER F. LYNCH,
Of Counsel for Petitioner.
703 Market Street,
San Francisco, California.